

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELECTRONIC FRONTIER FOUNDATION,

No. C 09-05640 SI

Plaintiff,

**ORDER GRANTING MOTION TO
CONSOLIDATE CASES AND
DIRECTING COUNSEL TO SUBMIT
NEW BRIEFING SCHEDULE**

v.

DEPARTMENT OF DEFENSE, et al.,

Defendants.

Plaintiff Electronic Frontier Foundation (EFF) has filed a motion to consolidate this case with the later-filed related case *Electronic Frontier Foundation v. Department of Homeland Security*, No. C 10-5526. EFF's motion is currently set for hearing on January 28, 2011. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument and hereby VACATES the hearing. Having considered the papers submitted, and for the reasons discussed below, the Court GRANTS plaintiff's motion to consolidate.

Both of these cases stem from a series of identical Freedom of Information Act (FOIA) requests submitted by EFF to various federal agencies on October 7 and 8, 2009. *See* Complaint No. C 10-5526, ¶ 14; Complaint No. C 09-5640, ¶ 18. Those FOIA requests seek documents regarding agency use of social-networking sites. Complaint No. C 10-5526, ¶ 15; Complaint No. C 09-5640, ¶ 19. The current defendants in Case No. C 09-5640 are the Department of Homeland Security (DHS) and its component Secret Service; and the Department of Justice (DOJ) and its components Federal Bureau of Investigation, Drug Enforcement Agency, and Criminal Division. The defendant in Case No. 10-5526 is also DHS, but with its component Immigration and Customs Enforcement (ICE).

The Court concludes that there are common facts and legal issues that merit the consolidation


1 of the cases. While the agency defendants in Case No. C 09-5640 may assert different factual arguments
2 as to the timeliness of their responses and the adequacy of their searches than DHS/ICE will assert in
3 Case No. C 10-5526, the fact that the FOIA requests seek identical information persuades the Court that
4 the applicability of FOIA exemptions to the information withheld by the agencies in both cases presents
5 a set of overarching legal questions that weigh in favor of consolidation here.

6 The Court is cognizant of the defendants' objections to consolidation based on the disruption
7 of the agreed-to briefing schedule for summary judgment motions, which requires motions to be filed
8 on February 11, 2011. However, according to plaintiff, DHS/ICE has identified only 32 responsive
9 documents. *See* Declaration of Jason Schultz in Support of Reply, Ex. B. Given the limited number
10 of documents identified by ICE, the Court believes that only a short extension in the briefing schedule
11 is necessary to allow ICE to prepare its *Vaughn* index and moving papers. Such a short continuance will
12 not unduly prejudice any of the defendants and will allow the Court to resolve these cases in a more
13 efficient and orderly manner.

14 For the foregoing reasons, plaintiff's motion to consolidate is GRANTED. The parties are
15 ordered to meet and confer and submit a joint proposal for continued briefing dates on the motions for
16 summary judgment that allows sufficient time for DHS/ICE to prepare its *Vaughn* index and moving
17 papers.

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20 **IT IS SO ORDERED.**

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22 Dated: January 24, 2011

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25 SUSAN ILLSTON
26 United States District Judge
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